

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CARREA CHRISTOPHER,

Plaintiff,

v.

REACHING FOURTH MINISTRIES, *et*
al.,

Defendants.

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Case No. 6:18-CV-219-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of the complaint has been presented for consideration. Docket No. 57. The Report and Recommendation filed on March 11, 2019, recommends that Defendants' Motion to Dismiss for Failure to State a Claim Under Federal Rules of Civil Procedure 12(b)(6) and 9(b) (Docket No. 44) be granted and that the sole remaining fraud claim be dismissed without prejudice for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B). Plaintiff, proceeding pro se, filed written objections on April 8, 2019 (Docket No. 61), that were followed by a response by Defendants on April 9, 2019 (Docket No. 62), and a reply by Plaintiff on April 11, 2019 (Docket No. 63).

The only remaining claim in this case is a fraud claim asserted by Plaintiff against Defendants. The Report and Recommendation finds that the Second Amended Complaint (Docket No. 18) asserts conclusory allegations that do not meet the pleading requirements of Federal Rule of Civil Procedure 9(b). In his written objections, Plaintiff asserts that he is being treated harshly and that Defendants are being treated favorably. *See* Docket No. 61. He argues that Defendants

are performing an “illegal drainage of land” and that his fraud claim is tolled until he discovered or reasonably could have discovered the fraudulent concealment. *Id.*


As set forth in the Report and Recommendation, a complaint alleging fraud requires a party to “state with particularity the circumstances constituting fraud or mistake.” FED. R. CIV. P. 9(b). Stating a fraud claim requires a plaintiff to allege “the particulars of ‘time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what [that person] obtained thereby.’” *Tel-Phonic Services, Inc. v. TBS Int’l, Inc.*, 975 F.2d 1134, 1139 (5th Cir. 1991) (citation omitted). Neither Plaintiff’s pleadings nor his written objections point to specific facts concerning any fraudulent statements that were made, identify the speaker, state when and where the statements were made, or explain how the statements were fraudulent. *See* Docket Nos. 18 & 61. Plaintiff has not met pleading requirements to state a fraud claim.

Before Plaintiff’s remaining fraud claim was severed and transferred to this Court, a court in the Southern District of California entered an order dismissing Plaintiff’s conversion and negligence claims as time-barred. Docket No. 1. The Report and Recommendation addresses only Plaintiff’s remaining fraud claim that was transferred to this Court. Docket No. 57. As a result, to the extent Plaintiff argues that the statute of limitations should be tolled for his conversion and negligence claims, that issue was not included in the Report and Recommendation and is not currently before the Court. *Id.*

Having made a de novo review of the written objections filed by Plaintiff in response to the Report and Recommendation, and the response and reply thereto, the Court concludes that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit. Plaintiff has not stated a claim upon which relief may be granted and the complaint should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). It is therefore **ORDERED** that Plaintiff’s written

objections, filed as a Motion for Reconsideration (Docket No. 61) are **OVERRULED**. The Motion to Dismiss for Failure to State a Claim Under Federal Rules of Civil Procedure 12(b)(6) and 9(b) (Docket No. 44) is **GRANTED**, and the sole remaining fraud claim is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B). The dismissal is without prejudice to the filing of an amended complaint, limited in scope to the claim for fraud, that complies with the pleading requirement in Federal Rule of Civil Procedure 9(b), within fourteen days of the date this Order is filed.

So **ORDERED** and **SIGNED** this **2nd** day of **May, 2019**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE